



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 6, 1996

Mr. David Ross Brown
Assistant General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR96-1611

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37728.

The General Service Commission (the "GSC") received a request for information pertaining to Request for Proposal ("RFP") #3-1095RC.¹ You say the GSC will release portions of the requested information, but you ask whether the GSC must withhold from required public disclosure pursuant to section 552.110 of the Government Code the responses to the referenced RFP by Avis Rent-a-Car, Advantage Rent-a-Car, and Alamo Rent-A- Car.

The GSC takes no position as to whether section 552.110 applies to the requested responses. Since the property rights of the rental car companies who responded to the RFP are implicated by the release of the requested information, this office notified those companies of this request. *See* Gov't Code § 5522.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code 552.305 permits governmental body to rely on interested third party to raise and explain applicability of Open Records Act exceptions in certain circumstances). With the

¹GSC received another request for information pertaining to the referenced RFP dated December 6, 1995; however, the requestor withdrew that request.

exception of Avis, none of the car rental companies responded to our notification. We therefore assume that those companies assert no property interest in the information in their RFPs. Consequently, we have no basis to conclude that the GSC may withhold the RFPs of those companies who failed to assert a property interest in them.

Avis asserts that the requested information is wholly excepted from required public disclosure pursuant to sections 552.101, 552.104, and 552.110, and, in the alternative, that portions of the requested information are excepted from required public disclosure based on the same exceptions.

Section 552.101 of the Government Code excepts from disclosure information that is confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

The doctrine of common-law privacy generally applies to financial information about an individual unless the information relates to a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992). The information at issue contains the personal Avis account number of an Avis employee. This number is protected from public disclosure pursuant to section 552.101 of the Government Code and the common-law right to privacy.

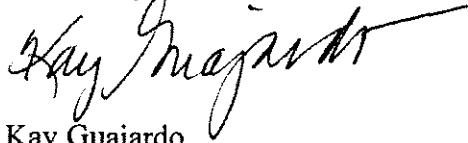
Section 552.110 excepts from disclosure two categories of information: (1) "[a] trade secret" and (2) "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." In applying the "commercial or financial information" branch of section 552.110, this office now follows the test for applying the correlative exemption in the Freedom of Information Act, 5 U.S.C. § 552(b)(4). *See* Open Records Decision No. 639 (1996). That test states that commercial or financial information is confidential if disclosure of the information is likely either (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *See National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

We conclude that Avis has established that the information at issue is commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision and consequently protected from public disclosure based on section 552.110 of the Government Code, with the following exceptions. As Avis does not

object to the release of information found in summary form in the Texas State Travel Directory, the GSC can not withhold that same information as it appears in the bid. The bid also contains two documents that we do not consider to be covered by either branch of section 552.110 or any other exception to disclosure, a Good Faith Effort Program questionnaire and a Family Code section 232.006 questionnaire. The GSC may not withhold these questionnaires from public disclosure.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 37728

Enclosures: Submitted documents

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